

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

ORDER

Adopted: June 19, 2014

Released: June 19, 2014

By the Chief, Industry Analysis and Technology Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request of Fremont Telcom Co. (Fremont) for expedited waiver to correct the number of exchanges in Fremont's study area 472222 that was used in the analysis that established "benchmarks" for high-cost loop support (HCLS) for 2014.¹

II. BACKGROUND

2. In the *HCLS Benchmarks Implementation Order*,² the Wireline Competition Bureau (Bureau) adopted the methodology for establishing limits on reimbursable capital costs and operating expenses (capex and opex, respectively) to implement the benchmarking rule that the Commission adopted in the *USF/ICC Transformation Order*.³ The HCLS benchmarking methodology uses quantile regression analyses to generate a capex limit and an opex limit for each rate-of-return cost company study area. The *HCLS Benchmarks Implementation Order* recognized that there were concerns regarding inaccuracies in certain data.⁴ In response, the Bureau created a streamlined, expedited waiver process for carriers affected by the benchmarks to correct any errors by providing accurate information in a manner and format that Bureau staff could readily evaluate and process to determine whether there are special circumstances supporting a waiver.⁵

¹ See Fremont Telcom Co.'s Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed Feb. 28, 2014) (Fremont Waiver Petition).

² *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235 (Wireline Comp. Bur. 2012) (*HCLS Benchmarks Implementation Order*).

³ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17741-47, paras. 210-26 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

⁴ *HCLS Benchmarks Implementation Order*, 27 FCC Rcd at 4246, para. 27.

⁵ See *id.* at 4246-47, paras. 27, 29. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*,

3. In February 2014, Fremont filed a waiver petition requesting that the Commission correct the number of exchanges used in calculating Fremont's 2014 HCLS from three to four.⁶ Fremont states that prior to 2014, Fremont was owned by a price-cap carrier (FairPoint Communications) and received Connect America Fund (CAF) Phase I support.⁷ During 2013, Fremont was purchased by Blackfoot Telephone Cooperative, Inc. (Blackfoot), a rate-of-return incumbent local exchange carrier (ILEC).⁸ Fremont continued to receive CAF Phase I support through the end of 2013⁹ and then began receiving rate-of-return HCLS as of January 1, 2014.¹⁰

4. On January 15, 2014, the Wireline Competition Bureau (Bureau) released a Public Notice indicating the HCLS benchmark for Fremont.¹¹ At this time, Fremont discovered that the Bureau had based its benchmark calculations on Fremont having three exchanges because the National Exchange Carrier Association (NECA) had incorrect information in its databases regarding Fremont.¹² Fremont's Local Exchange Tariff approved by the Idaho Public Utilities Commission shows that Fremont in fact has four exchanges, rather than three.¹³ According to Fremont, NECA has now corrected its databases to reflect that Fremont has four exchanges.¹⁴

5. Recently, the Commission eliminated the high-cost loop support (HCLS) benchmarking rule so that rate-of-return carriers' support will no longer be limited by benchmarks calculated using quantile regression analysis.¹⁵

III. DISCUSSION

6. In support of its request to correct the number of exchanges in its study area, Fremont has provided maps of its four exchanges from its local exchange tariff approved by the Idaho Public Service Commission. The information submitted included a certification by an officer of the company under penalty of perjury that the information provided accurately portrays Fremont's exchanges.¹⁶

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418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁶ Fremont Waiver Petition at 3.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ See *Connect America Fund; High Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 28 FCC Rcd 10999 (2013).

¹⁰ *Id.*

¹¹ *Wireline Competition Bureau Releases High-Cost Loop Support Benchmarks for 2014*, WC Docket Nos. 10-90, 05-337, Public Notice, 29 FCC Rcd 288 (Wireline Comp. Bur. 2014).

¹² Fremont Waiver Petition at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 14-54 at 4, para. 8 (rel. June 10, 2014).

¹⁶ Letter from Jason B. Williams, Vice-President - General Counsel, Fremont, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Apr. 3, 2014).

7. Pursuant to section 1.3 of the Commission's rules, we find that good cause has been shown and special circumstances warrant waiver of the Commission's rules to revise the benchmarks for Fremont's study area for 2014. Although the Bureau adopted a deadline of August 1, 2013 for waivers for correcting data for 2012 and 2013 benchmarks,¹⁷ Fremont is requesting an adjustment to the cap applicable to 2014.¹⁸ Moreover, we note that Fremont was unaware that the information in NECA's databases was incorrect because Fremont had not been subject to the benchmark rule previously.

8. Using the corrected exchange information, the Bureau staff modified the relevant variables and calculated a revised benchmark for Fremont. We direct NECA to use the revised benchmarks in Table 1 in place of the original benchmarks for calculating HCLS for Fremont for the period from January 2014 until the effective date of the elimination of the benchmarking rule. Using the revised boundary information, Fremont's benchmark increased, and it is not capped. Therefore, it is eligible for redistributed HCLS. We also instruct the Universal Service Administrative Company to make any necessary support amount adjustments consistent with the corrected information for the period from January 2014 until the effective date of the elimination of the benchmarking rule.

Fremont	Total Cap Per Loop	Total Cost Per Loop	Capped?
Original	\$943.46	\$974.12	Yes
Revised	\$977.26	\$974.12	No

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 254, 303(r), 1302, sections 0.91, 0.201(d), 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, and 1.3, and the delegations of authority in paragraphs 210, 217, 226 and 1404 of the *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), that the petition for expedited waiver to correct the number of exchanges filed by Fremont Telcom Co. IS GRANTED to the extent described herein.

¹⁷ *Wireline Competition Bureau Announces Deadline for Submission of Study Area Boundary Waivers*, Public Notice, WC Docket Nos. 10-90, 05-337, 28 FCC Rcd 5662 (2013).

¹⁸ Fremont Waiver Petition at 1.

10. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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